

**THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE N. BALAYOGI**

CRIMINAL APPEAL No.934 OF 2012

JUDGMENT: (per Hon'ble Sri Justice C.Praveen Kumar)

The sole accused in Sessions Case No.78 of 2012 on the file of III Additional Sessions Judge (Fast Track Court), Asifabad, is the appellant herein. He was tried on two charges. The first charge was under Section 302 I.P.C. for causing the death of his grand father, by name Banoth Chethru, on 06.10.2011 at 11:00 PM by beating him with an axe below his left leg knee. The second charge was under Section 75 I.P.C. bringing to the notice of the Court about the previous convictions of the accused under different crimes. Vide judgment, dated 31.07.2012, rendered in the aforesaid Sessions Case, the learned Sessions Judge, convicted the appellant-accused for the offence punishable under Section 302 I.P.C. and sentenced him to suffer imprisonment for life and to pay fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for one month. Challenging the same, the present appeal came to be filed.

2. The facts of the case, as culled out from the evidence adduced by the prosecution, are as under:

PW.1 is the grand son of the deceased, while PW.2 is the mother of PW.1 and daughter-in-law of the deceased. PWs.3,

4 and 5 are neighbours. The accused is also the grand son of the deceased.

It is the case of the prosecution that the accused, who got addicted to alcohol, is a rowdy sheeter and was not doing any work. Though, he was married, his wife left his company because of his habits. The deceased used to get old age pension of Rs.200/- per month. The accused used to demand the deceased to give money for meeting the expenditure of his bad habits. On a Dasara festival day at about 06:00 PM, the accused came and demanded money from the deceased. The deceased refused to pay stating that he has no money and the pension amount was spent towards medicines. A quarrel took place between the deceased and the accused, pursuant to which, the accused left the house. At about 11:00 PM, accused returned to the house and slept in the house. As it was a Dasara festival day, the family members of the deceased, who were residing next door, were in their house. At about 11:00 PM, the deceased raised hue and cries. On hearing the same, all of them went towards the house of the deceased and found a crush injury below the left leg knee of the deceased. The accused, who was present there armed with an axe, tried to give a second blow on the deceased, but on seeing the family members, he ran away along with the axe. Immediately thereafter, the deceased was taken to Government Hospital, Bellampally, where first aid was done

and on the advice of the doctor, he was shifted to Government Hospital, Mancherial. On the next day i.e., on 07.10.2011, while taking treatment in the Government Hospital, Mancherial, the deceased succumbed to the injuries.

The incident in question is said to have taken place on 06.10.2011. On the next day i.e., on 07.10.2011, PW.14 – the Sub-Inspector of Police received Telugu written report from PW.1, basing on which, he registered a case in Crime No.76 of 2011 of Kasipet Police Station, Adilabad District, for the offence punishable under Section 302 I.P.C. Ex.P22 is the F.I.R. Thereafter, he visited the Government Hospital, Mancherial. On receiving information about the registration of a crime, PW.15, the Circle Inspector of Police, took over investigation from the Sub-Inspector of Police; visited the Government Hospital, Mancherial, and examined PWs.1 to 3. In the presence of PW.12, he observed the dead body of the deceased and got the dead body of the deceased photographed. He then conducted inquest over the dead body of the deceased. Ex.P9 is the inquest report. During inquest, he seized the blood stained shirt of the deceased. After completing the inquest proceedings, he sent the dead body of the deceased for postmortem examination. PW.13, the Civil Assistant Surgeon in Area Hospital, Mancherial, conducted autopsy over the dead body of the deceased and issued Ex.P21 – postmortem examination report. He noticed three

injuries on the left leg of the deceased, below the knee and opined that the cause of death of the deceased was due to 'hemorrhagic shock due to comminuted fracture of both bones of left leg'. In continuation of his investigation, PW.15 visited the scene of offence, prepared panchanama of the scene under Ex.P11 and also prepared a rough sketch of the scene, which is placed on record as Ex.P23. During the said proceedings, he examined PWs.4 to 6 and recorded their statements. On 11.10.2011, at about 05:00 PM, he apprehended the accused in front of Singareni Dispensary at Somagudem, and in the presence of PW.10, he interrogated the accused. The accused is said to have confessed about the offence, leading to recovery of M.O.1 – axe from the bushes. The confessional panchanama of the accused was marked as Ex.P12. Since, the M.O.1 was stained with blood, the same was sent to Forensic Science Laboratory. After obtaining necessary documents and examining the witnesses, a charge sheet came to be filed before the Court of II Additional Judicial Magistrate of First Class, Mancheri, which was taken on file as P.R.C.No.14 of 2011. On appearance of the accused, copies of the documents were furnished to him, by following the procedure laid down under Section 207 Cr.P.C., and later the case was committed to the Court of Sessions, under Section 209 Cr.P.C., wherein it came to be numbered as S.C.No.78 of 2012.

3. On consideration of material placed on record, charges under Sections 302 and 75 I.P.C. came to be framed against the accused, which were read over and explained to him, to which, he pleaded not guilty and claimed to be tried.

4. To substantiate their case, the prosecution examined PWs.1 to 15 and got marked Exs.P1 to P25 and M.Os.1 to 7. Out of the 15 witnesses examined by the prosecution, PW.11 did not support the prosecution case and was treated as hostile by the prosecution.

5. After the closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against him in the evidence of prosecution witnesses. He denied the same, but, however, he did not place on record any defence evidence.

6. In view of the evidence of PWs.1 to 4, coupled with the medical evidence, the trial Court, vide its judgment under challenge, convicted the accused for the offence punishable under Section 302 I.P.C. and sentenced him to suffer imprisonment for life.

7. Learned counsel for the appellant would mainly submit that even accepting the entire case of the prosecution to be true, no offence is made out. He would further submit that since the incident is preceded by a quarrel, the nature of

offence may be scaled down to one punishable under Section 304 I.P.C.

8. On the other hand, the learned Public Prosecutor would contend that since the accused caused more than one injury and the death of deceased was within a day after the incident, the intention of the accused to cause the death is clearly visible. He would further submit that the reason for accused committing the murder was because of the quarrel that took place between the accused and the deceased on the date of incident at 06:00 PM, which is apparent from the evidence of PWs.1 to 4. Hence, pleads that the findings of the trial Court warrant no interference.

9. As seen from the record, there is no dispute with regard to the relationship between the parties. The accused is none other than the grand son of the deceased. It is also not in dispute that the wife of the accused left him because of his habits. It is also not in dispute that on the date of incident at 06:00 PM, there was a quarrel between the accused and the deceased, when the accused, in a fully drunken condition, asked the deceased to give him the pension amount for consuming alcohol, as it was a Dasara festival day, to which, the deceased refused.

10. As per the evidence of PW.1, after the deceased refused to give money, the accused left the place. Thereafter, the

accused returned back at 11:00 PM and slept in the house. As it was a Dasara festival day, all the family members were in their houses. Then, the grand father of the accused raised cries and on hearing the same, PWs.1 to 4 and others proceeded to the house of the deceased. There they saw a crush injury on the left leg of the deceased.

11. Coming to the evidence of PW.2, it is her evidence that on the date of incident at about 06:00 PM, the accused came home in a fully drunken condition and quarreled with the deceased to give the pension amount. When the deceased refused, the accused went away and came back at 11:00 PM. At that time, she heard the cries of the deceased and she along with others proceeded towards the deceased. There they saw the accused standing with an axe. They also noticed a crush injury on the left leg below the knee of the deceased. On seeing the family members coming towards the deceased, the accused left the place with the axe.

12. The evidence of PW.3 also discloses that on the date of incident at about 11:00 PM, he heard cries of the deceased and proceeded to the house of the deceased along with others. He saw the deceased in a pool of blood and a crush injury on the left leg. He also refers to the presence of the accused. On seeing them, the accused is said to have ran away.

13. PW.4, who is also a neighbour, deposed that the accused, who had no work, used to take alcohol. According to him, on the date of incident, the accused quarreled with the deceased and went away. At about 10:00 or 11:00 PM, on hearing the cries of the deceased, he along with others proceeded towards the house of the deceased and noticed an injury on the left leg of the deceased. He also noticed accused standing there with an axe. According to him, accused tried to beat the deceased for the second time, but he along with others intervened and tried to stop the accused.

14. Though, all the witnesses were cross-examined, nothing useful was elicited to discredit the presence of the accused at the time of incident. Learned counsel for the appellant mainly submits that none of the witnesses have seen the actual attack and the evidence of PWs.3 and 4 only refers to preventing the accused in giving second blow. But, all the witnesses in one voice categorically deposed about hearing the cries of the deceased and proceeding towards the house of the deceased and seeing the accused armed with an axe near the deceased. All the witnesses also referred to the quarrel that took place on the date of incident in the evening in the house of the deceased, when the accused was in a drunken condition. Suggestions came to be given disputing the very incident and also participation of the accused in the commission of the offence, but all the said suggestions

remained as suggestions and the same were denied by the prosecution witnesses. No explanation is forthcoming from the accused as to why he was standing near the deceased armed with an axe. Therefore, the argument of the learned counsel for appellant that there is no material to show that the appellant alone caused the injuries cannot be accepted.

15. The question now is whether the accused can be convicted for an offence punishable under section 302 I.P.C.

16. The evidence of all the witnesses, which has been referred to above, would show that there was no enmity or animosity between the accused and the deceased. In fact, as stated earlier, the deceased is no other than the grand father of the accused and all of them were staying at one place. Though, PW.1 in his evidence states that accused came and slept in the house, but, however, in his cross-examination, it was elicited that at the time of death of the deceased, the accused got separated from them and was residing separately till the death of the deceased. The evidence of PW.2 also goes to show that PWs.1 and 2 were residing in the same house and the deceased was living next door.

17. Be that as it may, all the witnesses deposed about some petty differences between the deceased and the accused. The material, which is placed on record, also shows that the accused was habituated to alcohol and on the date of incident

at about 06:00 PM, he demanded the deceased to give money for consuming alcohol, as it was a festival day, to which the deceased refused. As such, there was a petty quarrel between both of them and thereafter, the accused left the place and returned at 11:00 PM. From the above, it cannot be said that the accused had any grouse to kill the deceased. Even according to them, if the accused has a grouse or developed an intention to kill the deceased, he would have caused injuries on the vital parts of the body of the deceased. As seen from the evidence of PW.13, the doctor who conducted postmortem examination over the dead body of the deceased, there were two injuries on the body of the deceased, which were below the left leg knee, and the third injury was a deformity of left leg. At this stage, it is also required to be noted that about one or two years prior to the incident, the deceased had a fracture to his left leg and was treated for a considerable period of time. Even on the date of incident, the injuries were caused on the left leg. As stated earlier, if the accused has an intention to cause death of the deceased, he would have attacked the deceased on vital parts of his body.

18. Having regard to the facts and circumstances of the case, we are of the opinion that the accused never shared any motive or intention to kill the deceased, but definitely he has knowledge that such injury would likely to cause the death of the deceased.

19. In the result, the Criminal Appeal is partly allowed. The conviction recorded against the appellant – accused by judgment, dated 31.07.2012, in S.C.No.78 of 2012 on the file of III Additional Sessions Judge (Fast Track Court), Asifabad, for an offence punishable under Section 302 I.P.C. is altered to one under Section 304-II I.P.C. and the sentence of life imprisonment inflicted on the appellant is reduced to seven years imprisonment. The period of remand, if any, undergone by the appellant shall be given set off. If the appellant has completed the seven years of sentence with remissions, if he is otherwise entitled to, he shall be set at liberty forthwith, if not required in any other case. The order passed by the trial Court with regard to Material Objects shall hold good.

Miscellaneous Petitions, if any, pending in this Criminal Appeal shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

December 15, 2017
MD

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